

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

BARRICK RESOURCES (USA), INC., and
SUBSIDIARIES,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION
AND ORDER

Case No. 2:03-CV-01006

Judge Dee Benson

Plaintiffs Barrick Resources (USA) Inc. and Subsidiaries (collectively "Barrick") have filed the present action against the United States, seeking a tax refund based on amended tax returns filed in 2002 and 2003. Before the Court is Barrick's Motion for Summary Judgment on all claims and the United States' Motion for Summary Judgment on all claims. The Court issues the following Memorandum Opinion and Order.

BACKGROUND

The essential facts involved in this case are undisputed. On September 12, 2001, Barrick timely filed an amended tax return for the tax year 1997 in which it carried back its net operating loss from 1997 to the tax years 1994 and 1995 pursuant to 26 U.S.C. § 172(b)(1)(A)(i). *See* Barrick's Reply to U.S.' Supp. Mem., ¶ 5. In the space provided for "Explanation of Changes" in Barrick's amended returns for 1994 and 1995, Barrick stated, "See below the Schedule of Net Operating Loss Carryback." This was followed by a detailed chart describing the proposed changes. *See* Declaration of Justin Kim, Exhibit 1 at 3, and Exhibit 2 at 2, attached hereto as Exhibit A. Barrick did not mention reclamation costs in either the explanation of changes or the attached schedule detailing the net operating loss carryback. Barrick admitted "[it] does not dispute that these 2001 refund claims only referenced a 'net operating loss carryback' and made

no reference to ‘reclamation’ losses or deductions.” *See* Barrick’s Reply to U.S.’s Supp. Mem., ¶ 5. Barrick, however, reported \$1,077,310 as a “Reclamation & Closure” expense, a line-item appearing under the “Other Costs” section of its Schedule A expenses, which contributed to the amount entered on Line 2 of its Form 1120 Amendment. *See* Barrick’s Reply to U.S.’s Supp. Mem., Exhibit 1.

On September 13, 2002, Barrick filed another set of amended tax returns for 1994 and 1995 seeking to reclassify portions of the 1997 and 1998 net operating losses that had previously been carried back to 1994 and 1995, and to carry them back to the tax years 1991 and 1992, despite the fact that the statute of limitations for requesting refunds from 1997 had run. *Id.*, at ¶ 5.

In the space provided for “Explanation of Changes” in the newly amended returns for 1994 and 1995, Barrick stated, “1997 Reclamation Loss Carryback (See Statement 1 &2).” *See* Declaration of Justin Kim, Exhibit 3 at 2, and Exhibit 4 at 2, attached hereto as Exhibit B. The statements referenced in the parentheses each stated, “NOTE: Reclamation Loss is entitled to a 10-year carryback under section 172(b)(1)(C).” *See* Declaration of Justin Kim, Exhibit 3 at 3, and Exhibit 4 at 3, attached hereto as Exhibit C. Barrick also filed amended tax returns for 1991 and 1992 reflecting the claimed reclamation losses and requesting refunds in the amount of \$26,754 and \$188,709 for the carryback of the 1997 net operating loss to 1991 and 1992 respectively; and \$964,718 for the carryback of the 1998 net operating loss to 1992. *See* Barrick’s Reply to the U.S.’s Supp. Mem., ¶ 7.

On December 4, 2002, the IRS refunded \$26,754 and \$1,153,427 (the sum of \$188,709 and \$964,718) to Barrick for its amended 1991 and 1992 claims, respectively. *See* Def. Mem. in Supp. of Mot. for Summ. Judg., at 2, ¶ 9. On December 18, 2002, however, the IRS provided Barrick with a Revenue Agent’s Report which stated, “The 10 year carryback 1120X claim to

years 1991 and 1992 filed on 9/13/02 was not recognized by the Ogden Service Center as part of a Joint Committee reportable amount. It refunded the claimed amounts on 12/2/02 in error.” *See Id.*, at Exhibit H, attached hereto as Exhibit D.

On May 3, 2003, Barrick filed a correction to its September 13, 2002 amended return for 1991 in which it sought to apply the reclamation costs from the tax years 1997 and 1998 to reduce its tax liability for 1991. *See* Def. Mem. in Supp. of Mot. for Summ. Judg., at 2, ¶ 10. Based on the correction, Barrick requested a refund of \$1,120,411, plus interest. *See* Pl. Mem. in Supp. of Mot. for Summ. Judg., at 6, ¶ 14. The IRS rejected Barrick’s claim on the grounds that it was untimely.

On November 17, 2003, Barrick filed suit to recover the refund it claimed in its 2003 amendment. Both the United States and Barrick filed motions for summary judgment on July 30, 2004. The Court heard oral argument on the cross-motions for summary judgment on November 3, 2004. Before the Court issued an order on the cross-motions for summary judgment, the United States filed suit against Barrick seeking to recover the amounts it erroneously refunded to Barrick for the tax years 1991 and 1992 based on the carryback of the 1997 reclamation loss. On December 10, 2004, Barrick filed a motion to consolidate the cases because they arose from the same facts and hinged on the question of whether the September 13, 2002, amended returns were timely filed. *See* Pl. Mot. to Consolidate, at 2, ¶ e. On January 11, 2005, the Court ordered that the cases be consolidated. Barrick then filed a motion for summary judgment on November 17, 2005, and the United States filed a cross-motion for summary judgment on January 18, 2006. On June 9, 2006, the Court met with counsel for both Barrick and the United States and requested supplemental briefing.

The Court now issues the following Memorandum Order and Opinion DENYING

Barrick's motion for summary judgment and GRANTING the United States' motion for summary judgment.

ANALYSIS

Summary judgment is appropriate when the movant demonstrates there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56(c); Otteson v. United States*, 622 F.2d 516, 519 (10th Cir. 1980). The Court considers the factual record and all reasonable inferences that may be drawn from it in the light most favorable to the party opposing summary judgment. *MacKenzie v. City and County of Denver*, 414 F.3d 1266, 1273 (10th Cir. 2005).

The pivotal issue in this case is whether Barrick's September 13, 2002 filing, which it filed after the statute of limitations for filing an amendment to its 1997 tax return had expired, constituted an amendment of its timely filed September 2001 amendment or whether it constituted a new claim. The Supreme Court addressed the boundaries of tax amendments that are permissible after the statute of limitations has run in *U.S. v. Andrews*, 302 U.S. 517, 524 (1938). In *Andrews*, the petitioner filed a request for a refund after the statutory time period for filing refund claims had expired. *Id.*, at 519. The petitioner stated that it was filing 'an amendment and amplification of claim for refund' and asserted that a sum previously reported as a dividend was instead proceeds from a sale of stock. *Id.* The error resulted in overpayment of \$6,454.09. *Id.* The Court began its analysis by describing when an untimely amendment would be permissible. It stated:

Where a claim which the Commissioner could have rejected as too general, and as omitting to specify the matters needing investigation, has not misled him but has been the basis of an investigation which disclosed facts necessary to his action in making a refund, an amendment which merely makes more definite the matters already within his knowledge, or which, in the course of his investigation, he would naturally have ascertained, is permissible. On the other hand, a claim

which demands relief upon one asserted fact situation, and asks an investigation of the elements appropriate to the requested relief, cannot be amended to discard that basis and invoke action requiring examination of other matters not germane to the first claim.

Id., at 524. The Court then ruled that the amendment at issue was untimely because it bore no relation to the original claim:

While matters were in this posture, and after the period of limitation had expired, the respondent presented a so-called amendment of her claim having no relation whatever to the items set forth in the original claim but dealing with a wholly distinct item of \$36,750 reported as dividends received and asking that it be eliminated from that category and that the transaction be reclassified as capital gain upon a basis which would result in a reduction of tax by some \$6,000.

Id., at 525. The Court concluded, "There is no finding that, prior to the attempted amendment, the Commissioner knew the respondent was a stockholder of the Hanna Company or, if he did, that his attention was called to the fact that the reported receipt of dividends had a reference to what the taxpayer received in respect of preferred stock of that company." *Id.*, at 526.

More recently, the Tenth Circuit has addressed the scope of matters which may be properly amended after the statute of limitations has run. In a case involving an untimely amendment seeking to alter the depletion rate for limestone and clay, the Tenth Circuit stated, "The test applied to determine whether a new ground of recovery may be introduced after the statute has run by amending a pending claim filed in time depends upon the facts which an investigation of the original claim would disclose." *U.S. v. Ideal Basic Industries, Inc.*, 404 F.2d 122, 124 (10th Cir. 1969). "Where the facts upon which the amendment is based would necessarily have been ascertained by the commissioner in determining the merits of the original claim, the amendment is proper." *Id.* In *Ideal Basic*, the Court ruled, "When the initial claim was filed it was incumbent upon the commissioner to identify the minerals upon which depletion was claimed. The findings clearly indicated the identity of the minerals as limestone and clay,

entitled to the 15% depletion rate. Therefore, the commissioner could not have been misled.” *Id.*, at 125. Because the minerals entitled to the depletion rate by statute were clearly identified in the original claim, the amendment was proper.

Unlike the minerals in *Ideal Basic*, the reclamation expense Barrick seeks to carry back in its 2002 amendment was not clearly identified in its original tax claim or its timely filed 2001 amendment. In the 2001 amendment, Barrick sought to carry back a net operating loss, not a reclamation expense, from 1997 to the tax years 1994 and 1995. Barrick plainly stated in the space provided for an explanation of the amendment that the amendment arose from a carryback of the net operating loss. It made no mention of reclamation losses. Barrick also attached spreadsheets detailing the net operating losses for 1997 and 1998 with its amendments and explanations. These spreadsheets also failed to mention any reclamation losses. On its face, Barrick’s 2001 amendment does not contain facts pertaining to reclamation costs that the tax commission would have necessarily ascertained in determining the merits of Barrick’s amendment.

Barrick’s 2002 filing only highlights the disparity between the facts it brought to the commission’s attention in 2001 and those it sought to add in 2002. In contrast to its 2001 amendment, Barrick plainly stated in its 2002 amendment that the amendment was based on a reclamation loss carryback. Whereas the 2002 filing necessarily alerted the commission to a reclamation loss carryback, the 2001 amendment only informed the commission of a net operating loss.

Barrick argues that its 2001 amendment did set forth facts detailing the reclamation loss in the line-items of its “other costs,” which fall under Schedule A and are deducted to reach net income. Barrick argues that the commission would have been required to analyze this line-item

to determine the validity of the net operating loss carry back. This argument is unpersuasive because it was not necessary for the commission to examine the tax ramifications of every line-item included in a net operating loss to determine whether the loss carryback was proper. Such a requirement would place an undue burden on the tax commission. It is the taxpayer's, not the tax commission's, burden to set forth the basis for recovery. The Tenth Circuit described this burden in *Angle v. U.S.*, 996 F.2d 252 (10th Cir. 1993). *Angle* involved an untimely amendment to a tax return which reduced the petitioner's minimum tax by reducing its intangible drilling costs. *Id.*, at 253. The Tenth Circuit stated, "The Supreme Court and this court have repeatedly held that in a suit for a refund, a taxpayer may not rely on any ground for recovery that has not been set forth in a timely refund claim filed with the IRS." *Id.*, at 254 (citations omitted). It continued, "The purpose of such a requirement ... is to provide the IRS with adequate information to consider and dispose of claims without the need for litigation, and thus to avoid surprises." *Id.* In applying its reasoning to the petitioner's proposed amendment, the Tenth Circuit stated, "Neither proposition is akin to discovering a mathematical error in the earlier refund claim. Nor are these arguments obviously and necessarily correct as a matter of law. Rather, they involve theories different from any that taxpayer put forward in the timely filed claims." *Id.*

Like *Angle*, Barrick's 2002 amendment is not akin to discovering a mathematical error. Rather, it sets forth an entirely new theory of recovery, namely a reclamation loss rather than net operating loss. Net operating losses and reclamation losses are treated differently. While net operating losses are required to be carried back 3 years, reclamation losses are required to be carried back 10 years. See 26 U.S.C. § 172(b)(1)(A)(i) and (b)(1)(C). This disparate treatment in the tax code underscores the fact that net operating losses and reclamation losses are distinct theories of recovery that need to be set forth separately.

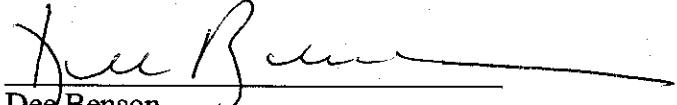
It was Barrick's duty to set forth facts in the 2001 amendment that would necessarily have alerted the tax commission to the reclamation expense. This it did not do. As a consequence, Barrick's 2002 amendment fails to meet the requirements for an untimely amendment. Similarly, Barrick's 2003 filing, which amended the improper 2002 amendment, also fails to meet the requirements for a proper filing.

CONCLUSION

For these reasons, the Court DENIES Barrick's motion for summary judgment and GRANTS the United States' motion for summary judgment.

IT IS SO ORDERED.

DATED this 30th day of October 2006.


Dee Benson
United States District Judge

Case 2:03-cv-01006-DB Document 49-3 Filed 08/08/2006 Page 3 of 7

Part II Explanation of Changes to Items in Part I (Enter the line number from page 1 for the items you are changing, and give the reason for each change. Show any computation in detail. Attach additional sheets if necessary. Also, see What To Attach on page 3 of the instructions.)

If the change is due to a net operating loss carryback, a capital loss carryback, or a general business credit carryback, see Carryback Claims on page 3, and check here

Part II Explanations of Changes

See below the Schedule of Net Operating Loss Carryback from 1997 to 1994

	Regular		AMT	
	As Filed	As Amended	As Filed	As Amended
	Prior amended for 1996 Carryback		Prior amended for 1996 Carryback	
Taxable Income before NOL	6,235,283	6,235,283	9,271,619	9,271,619
Net Operating Loss	(6,235,283)	(6,235,283)	(1,514,648)	(8,344,457)
Taxable Income	0	0	7,756,971	827,162
Rate	34%	34%	20%	20%
Income Tax	0	0	0	0
Alternative minimum Tax (Utilized)			1,551,394	135,432
Environmental Tax			8,726	8,726
Total Tax			1,560,120	194,158

Case 2:03-cv-01006-DB: Document 49-4 Filed 08/08/2006. Page 2 of 14

Form 1120T Rev. 12-97

Part II Explanation of Changes to Items in Part I (Enter the line number from page 1 for the items you are changing, and give the reason for each change. Show any computation in detail. Attach additional sheets if necessary. Also, see What To Attach on page 3 of the instructions.)

If the change is due to a net operating loss carryback, a capital loss carryback, or a general business credit carryback, see Carryback Claims on page 3, and check here 

Part II Explanations of Changes

See below the Schedule of Net Operating Loss Carryback from 1997 to 1995

	Regular		AMT	
	As Filed	As Amended	As Filed	As Amended
	Prior amended for 1996 Carryback		Prior amended for 1996 Carryback	
Taxable Income before NOL	4,871,178	4,871,178	5,543,729	5,543,729
Net Operating Loss	<u>(2,189,388)</u>	<u>(4,871,178)</u>	<u>0</u>	<u>(4,989,356)</u>
Taxable Income	2,707,790	0	5,543,729	564,373
Rate	34%	34%	20%	20%
Income Tax	920,649	0	920,649	0
Alternative minimum Tax (Utilized)		0	188,097	110,875
Environmental Tax		<u>4,252</u>	<u>4,252</u>	<u>4,252</u>
Total Tax		4,252	1,112,998	115,127

Case 2:03-cv-01006-DB Document 49-5 Filed 08/08/2006 Page 2 of 7

Form 1120X (Rev. 4-94)

Page 2

Part II **Explanation of Changes to Income, Deductions, Credits, etc. Enter the line number from page 1 for the items you are changing, and give the reason for each change. Show any computation in detail. Attach additional sheets if necessary.**

If the change is due to a net operating loss carryback, a capital loss carryback, or a general business credit carryback, see **Carryback Claims** on page 3, and check here ►

1997 RECLAMATION LOSS CARRYBACK (SEE STATEMENT 1&2)

B

Case 2:03-cv-01006-DB Document 49-8 Filed 08/08/2006 Page 2 of 13

Page 2

Form 1120X (Rev. 4-94)

Part II

Explanation of Changes to Income, Deductions, Credits, etc. Enter the line number from page 1 for the items you are changing, and give the reason for each change. Show any computation in detail. Attach additional sheets if necessary.

If the change is due to a net operating loss carryback, a capital loss carryback, or a general business credit carryback, see Carryback Claims on page 3, and check here

1997 AND 1998 RECLAMATION LOSS CARRYBACK (SEE STATEMENT 1&2)

BARRICK RESOURCES (USA) INC. & SUBSIDIARIES
FORM 1120X, RECLAMATION LOSS CARRYBACK DETAIL
FOR THE YEAR ENDED: DECEMBER 31, 1991

Personal Privacy

	Regular		AMT		Refund
	As Filed	As Amended	As Filed	As Amended	
Taxable Income before NOL	9,835,989	9,835,989	11,048,803	11,048,803	
Net Operating Loss	20,386,032	20,386,032	9,811,052	9,944,823	
Taxable Income	(10,550,043)	(10,550,043)	1,236,751	1,104,980	
Rate	34%	34%	20%	20%	
Income Tax					
Alternative Minimum Tax (Utilized)			247,750	220,996	
Environmental Tax			10,902	10,902	
Total Tax			258,652	231,898	26,754

NOTE: Reclamation Loss is entitled to a 10-year carryback under section 172(b)(1)(C)

BARRICK RESOURCES (USA) INC. & SUBSIDIARIES
FORM 1120X, RECLAMATION LOSS CARRYBACK DETAIL
FOR THE YEAR ENDED: DECEMBER 31, 1992

Personal Privacy

	Regular		AMT		Refund
	As Filed	As Amended	As Filed	As Amended	
Taxable Income before NOL	5,740,623	5,740,623	6,407,930	6,407,930	
Net Operating Loss	10,550,043	10,550,043		5,767,137	
Taxable Income	(4,809,420)	(4,809,420)	6,407,930	640,793	
Rate	34%	34%	20%	20%	
Income Tax					
Alternative Minimum Tax (Utilized)			1,281,586	128,159	
Environmental Tax			5,290	5,290	
Total Tax			1,286,876	133,449	1,153,427

NOTE: Reclamation Loss is entitled to a 10-year carryback under section 172(b)(1)(C)

Name of Taxpayer: Barrick Resources (USA) Inc. and subs.

Identification Number: 51-0258659

Form 870 page 2

Instructions

General Information

If you consent to the assessment of the deficiencies shown in this waiver, please sign and return the form in order to limit any interest charge and expedite the adjustment to your account. Your consent will not prevent you from filing a claim for refund (*after you have paid the tax*) if you later believe you are so entitled. It will not prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for either action.

We have agreements with State tax agencies under which information about Federal tax, including increases or decreases, is exchanged with the States. If this change affects the amount of your State income tax, you should file the required State form.

If you later file a claim and the Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

We will consider this waiver a valid claim for refund or credit of any overpayment due you resulting from any decrease in tax and penalties shown above, provided you sign and file it within the period established by law for making such a claim.

Who Must Sign

If you filed jointly, both you and your spouse must sign. If this waiver is for a corporation, it should be signed with the corporation name, followed by the signatures and titles of the corporate officers authorized to sign. An attorney or agent may sign this waiver provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If this waiver is signed by a person acting in a fiduciary capacity (*for example, an executor, administrator, or a trustee*) Form 56, Notice Concerning Fiduciary Relationship, should, unless previously filed, accompany this form.

This waiver of restrictions on assessment and collection is to take effect as a waiver of restrictions on the earlier of the date that expires 30 days after receipt by the Joint Committee on Taxation of a request for expeditious processing of any refunds due if, during the 30 day period, the Joint Committee on Taxation does not object in writing to the expeditious processing of such refunds or the date the Joint Committee on Taxation completes its review of the report submitted under Section 6405 of the Code without objection.

Form 4549-A (Rev. 9-2001)	Department of the Treasury - Internal Revenue Service Income Tax Examination Changes			Page _____ of _____
Name and Address of Taxpayer Barrick Resources (USA) Inc. & Subs P.O. Box 29 Elko, NV. 89003		Taxpayer Identification Number 51-0258659		Return Form No. 1120
		Person with whom examination changes were discussed	Name and Title	
1. Adjustments to Income		Year: 12/1995	Year: 12/1997	Year: 12/1998
a. Per RAR - Form 4549-B's		-26,251,310	-8,332,387	13,864,215
2. Total Adjustments		-26,251,310	-8,332,387	13,864,215
3. Taxable Income Per Return or as Previously Adjusted		2,707,790	-22,987,558	-38,626,039
4. Corrected Taxable Income		-23,543,520	-31,319,945	-24,761,824
Tax Method Filing Status		0	0	0
5. Tax		N/A	N/A	N/A
6. Alternative Taxes, If Applicable				
7. Alternative Minimum Tax (Starting 2000)				
8. Corrected Tax Liability		0	0	0
9. Less Credits: a. Foreign Tax Credit b. Other Subpart B Credits c. General Business Credit d. Minimum Tax Credit/Academy Bond		0 0 0 0	0 0 0 0	0 0 0 0
10. Balance (Line 8 less total of 9a-9d)		0	0	0
11. Plus Other Taxes: a. Misc. Tax/Recapture b. Alternative Minimum Tax (Before 2000) c. Environmental Tax d. Other Taxes		0 110,875 4,252 N/A	0 0 N/A N/A	0 0 N/A N/A
12. Total Corrected Income Tax Liability (Line 10 plus Lines 11a-11d)		115,127	0	0
13. Total Tax On Return or as Prev. Adjusted		1,112,998	0	0
14. Adjustments to: a. b. c. d.		0 0 0 0	0 0 0 0	0 0 0 0
15. Deficiency - Increase in Tax or (Overassessment - Decrease in Tax) (Line 12 less Lines 13 & 14a-14d)		-997,871	0	0
16. Adjust. to Prepay. Credits - incr (decr)		0	0	0
17. Balance Due or (Overpayment) (Line 15 less Line 16) Excluding interest and penalties		-997,871	0	0

Form 4549-A (Rev. 9-2001)	Department of the Treasury - Internal Revenue Service Income Tax Examination Changes		Page _____ of _____
Name of Taxpayer Barrick Resources (USA) Inc. & Subs	Taxpayer Identification Number 51-0258659	Return Form No. 1120	
18. Penalties Code Section	Year: 12/1995	Year: 12/1997	Year: 12/1998
a. b. c. d. e. f. g. h. i. j. k. l. m.	0 0 0 0 0 0 0 0 0 0 0 0 0	0 0 0 0 0 0 0 0 0 0 0 0	0 0 0 0 0 0 0 0 0 0 0 0
19. Total Penalties	0	0	0
Underpayment attributable to negligence: (1981-1987) A tax addition of 50 percent of the interest due on underpayment will accrue until paid or assessed.	0	0	0
Underpayment attributable to fraud: (1981-1987) A tax addition of 50 percent of the interest due on underpayment will accrue until paid or assessed.	0	0	0
Underpayment attributable to Tax Motivated Transactions (TMT). The interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC Sec. 6621(c)	0	0	0
20. Summary of Taxes Penalties and Interest: a. Balance Due/(Overpayment) (Line 17) b. Penalties (Line 19) computed to c. Interest (IRC 6601) computed to d. TMT Interest computed to on TMT Underpayment e. Amount due (refund) - (sum of Lines a-d)	-997,871 0 0 0 -997,871	0 0 0 0 0	0 0 0 0 0

Other Information: The 10 year carryback 1120X claim to years 1991 and 1992 filed on 9/13/02 was not recognized by the Ogden Service Center as part of a Joint Committee reportable amount. It refunded the claimed amounts on 12/2/02 in error. The overassessment amounts shown on this report for 1991 & 1992 are due to computational return errors and not refundable as they exceed the claim amounts and all limitation statutes have expired. Tax per return has been reduced by the claim refund amounts.

Examiner's Signature	85-00695 Employee ID	Phoenix, AZ Office	Date
Name: Floyd L. Kreitz			

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is shared with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.

You may be subject to backup withholding if you don't report all of the interest, dividend, or patronage dividend income you earned and if you don't pay the required tax. Once the tax has been assessed, you will be issued four notices over a 120-day period. If you don't pay the assessed tax, the IRS may require the payers to withhold a percentage of your dividend and/or interest payments.

Form 4549-A (Rev. 9-2001)	Department of the Treasury - Internal Revenue Service Income Tax Examination Changes		Page _____ of _____
Name and Address of Taxpayer Barrick Resources (USA) Inc. & Subs P.O. Box 29 Elko, NV. 89803		Taxpayer Identification Number 51-0258659	Return Form No. 1120
		Person with whom examination changes were discussed	Name and Title
1. Adjustments to Income		Year: 12/1991	Year: 12/1992
a. Per RAR - Form 4549-B's		-11,394,167	-11,544,720
2. Total Adjustments		-11,394,167	-11,544,720
3. Taxable Income Per Return or as Previously Adjusted		-10,550,043	-4,809,420
4. Corrected Taxable Income		-21,944,210	-16,354,140
Tax Method Filing Status			
5. Tax		0	0
6. Alternative Taxes, If Applicable		N/A	N/A
7. Alternative Minimum Tax (Starting 2000)		N/A	N/A
8. Corrected Tax Liability		0	0
9. Less Credits: a. Foreign Tax Credit b. Other Subpart B Credits c. General Business Credit d. Minimum Tax Credit/Academy Bond		0 0 0 0	0 0 0 0
10. Balance (Line 8 less total of 9a-9d)		0	0
11. Plus Other Taxes: a. Misc. Tax/Recapture b. Alternative Minimum Tax (Before 2000) c. Environmental Tax d. Other Taxes		220,294 10,818 N/A	125,746 5,145 N/A
12. Total Corrected Income Tax Liability (Line 10 plus Lines 11a-11d)		231,112	130,891
13. Total Tax On Return or as Prev. Adjusted		231,898	133,449
14. Adjustments to: a. b. c. d.		0 0 0 0	0 0 0 0
15. Deficiency - Increase in Tax or (Overassessment - Decrease in Tax) (Line 12 less Lines 13 & 14a-14d)		-786	-2,558
16. Adjust. to Prepay. Credits - incr (decr)		0	0
17. Balance Due or (Overpayment) (Line 15 less Line 16) Excluding interest and penalties		-786	-2,558
			-1,365,962

Form 4549-A (Rev. 9-2001)	Department of the Treasury - Internal Revenue Service Income Tax Examination Changes	Page _____ of _____	
Name of Taxpayer Barrick Resources (USA) Inc. & Subs	Taxpayer Identification Number 51-0258659	Return Form No. 1120	
18. Penalties Code Section	Year: 12/1991	Year: 12/1992	Year: 12/1994
a.	0	0	0
b.	0	0	0
c.	0	0	0
d.	0	0	0
e.	0	0	0
f.	0	0	0
g.	0	0	0
h.	0	0	0
i.	0	0	0
j.	0	0	0
k.	0	0	0
l.	0	0	0
m.	0	0	0
19. Total Penalties	0	0	0
Underpayment attributable to negligence: (1981-1987) A tax addition of 50 percent of the interest due on underpayment will accrue until paid or assessed.	0	0	0
Underpayment attributable to fraud: (1981-1987) A tax addition of 50 percent of the interest due on underpayment will accrue until paid or assessed.	0	0	0
Underpayment attributable to Tax Motivated Transactions (TMT). The interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC Sec. 6621(c)	0	0	0
20. Summary of Taxes Penalties and Interest: a. Balance Due/(Overpayment) (Line 17) b. Penalties (Line 19) computed to c. Interest (IRC 6601) computed to d. TMT Interest computed to on TMT Underpayment e. Amount due (refund) - (sum of Lines a-d)	-786	-2,558	-1,365,962

Other Information: The 10 year carryback 1120X claim to years 1991 and 1992 filed on 9/13/02 was not recognized by the Ogden Service Center as part of a Joint Committee reportable amount. It refunded the claimed amounts on 12/2/02 in error. The overassessment amounts shown on this report for 1991 & 1992 are due to computational return errors and not refundable as they exceed the claim amounts and all limitation statutes have expired. Tax per return has been reduced by the claim refund amounts.

Examiner's Signature	85-00695 Employee ID	Phoenix, AZ Office	Date
Name: Floyd L. Kreitz			

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is shared with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.

You may be subject to backup withholding if you don't report all of the interest, dividend, or patronage dividend income you earned and if you don't pay the required tax. Once the tax has been assessed, you will be issued four notices over a 120-day period. If you don't pay the assessed tax, the IRS may require the payers to withhold a percentage of your dividend and/or interest payments.

